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QUICK GUIDE TO TITLE IV

-- Title IV: CIA Charter found at pages 77 - 108 of S. 2284.

-- No provision in Title IV is in controversy with SSCI with exception of the scope of FOIA relief.

-- Section 411: Establishment clause; reestablishes CIA "under the direction of the National Security Council and subject to intelligence plans, objectives, and requirements established by the Director of National Intelligence."

-- Section 412(a):

(a) DNI = D/CIA unless President says otherwise, subject to advice and consent of Senate;

(b) the President may appoint the Deputy Director of National Intelligence (DDNI) or an Assistant Director of National Intelligence (ADNI) to be D/CIA (with advice and consent);

(c) the President may also transfer any duties and authorities of the D/CIA to the DDNI or an ADNI (with advice and consent).

-- Section 412(e)(4): D/CIA duty to "protect intelligence sources and methods from unauthorized disclosure."

-- Section 414 (FUNCTIONS): One function, Section 414(b)(4) was brought into dispute by DOD. Section 414(b)(4) states that the Agency shall "analyze foreign intelligence collected by any entity of the intelligence community and process such intelligence as necessary to fulfill its responsibilities under this Act." While Brzezinski "Presidential decision" memorandum is unclear as to President's decision, we have been informed that the matter has been settled in our favor. See Q's and A's for complete development.

-- Section 414(b)(7): Goes to the issue of who is accountable for CI. See Q's and A's for complete development.

-- Section 421(a)(5): Background Investigations; "suitability and trustworthiness."

-- Section 421(a)(8): "Physical security" (briefcase) checks.

-- Section 421(d): FOIA relief; limited scope.

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-- Section 421(g): D/CIA may:

(a) employ or contract for "security officers to police and protect the security of Agency personnel, installations, and grounds...";

(b) such security officers shall have the same powers as "sheriffs and constables."

-- Section 421(h): Firearms authority.

-- Section 421(i)(2): D/CIA's termination authority.

-- Section 421(i)(3): "Competitive service transferability" but with 1 year service caveat.

-- Section 421(j): D/CIA's "Gift Authority" - also contained in FY 82 authorization bill, albeit modified.

-- Section 421(l): Law enforcement caveat.

-- Section 423: "Proprietaries".

-- Section 425: "Alien Entry" authority - Section 7 of the CIA Act of 1949.

-- Section 426(b): D/CIA's "confidential funds" expenditures.

-- Section 426(c): Establishment of "Contingency Reserve Fund" (CFR).

-- Section 426(d): Procedures for withdrawal from CRF, including emergency procedure; NOTE "PRIOR NOTIFICATION" PROVISION.

-- Section 431(b)(2): Comparable extant State Department benefits to CIA.

-- Section 431(b)(3): "Educational travel;" already enacted in FY 80 authorization bill (P.L. 96-100).

-- Section 431(b)(4)(A) and (B): "Death Gratuity"; same as introduced in H.R. 5666 (Derwinski) and S. 1930 (Bentsen).

-- Section 431(c): Automatic parity (via DCI regulations) with State Department; disapproved by the President notwithstanding CIA's and Brzezinski's recommendation to the contrary.

-- Section 432: "CIARDS"

-- Section 443: Criminal Penalty for misuse of the name, initials, or seal of the CIA.

[NOTE: "Identities" criminal penaltities are found in Title VII, not in Title IV.]

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TITLE IV - Q's & A's

1. Section 412(a) allows the President to split the DNI and the D/CIA position, by appointing the DDNI or an ADNI to head the CIA or to transfer any of the duties or authorities of the D/CIA to the DNI (there may be questions as to whether this is good or whether the split should be made now in statute). What is the need for such a provision and doesn't such a provision invite trouble?

Answer:

-- This provision confirms present organizational arrangements (DCI has two roles);

-- provision does give President organizational flexibility:

. . . would allow DNI to devote more time to Community managerial responsibilities;

. . . would allow the DDNI or an ADNI to direct the clandestine collection function of CIA; and

. . . would allow the DDNI or an ADNI to direct the analysis function of CIA.

-- change in present arrangements indicated above would be subject to advice and consent of the Senate.

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2. We understand there is an internal dispute within the Administration, between CIA and DOD, over Section 414(b)(4) which authorizes the Agency to:

> "analyze foreign intelligence collected by any entity of the intelligence community, and process such intelligence as necessary to fulfill its responsibilities under this Act."

Could you explain?

Answer:

Executive Order 12036 (Section 1-605) provides authoritative basis:

> "1-605. Responsibility of Executive Branch Agencies. The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant Attorney General procedures, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States and shall give due consideration to requests from the Director of Central Intelligence for appropriate support for CIA activities."

Background to this is that CIA has had trouble obtaining intelligence collected by sensitive DOD collection systems.

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3. Both Sections 414(b)(7) and 414(d) deal with the Director of the Agency's (D/CIA'S) authorities to function at home and abroad in the area of counterintelligence and counterterrorism activities. Isn't this dual authority (FBI Director involved domestically) issue problematic and counterproductive?

Answer:

The question you have asked essentially goes to the rationale for the jurisdictional boundaries between departments and agencies embodied in the Charter bill. It was the decision of the Administration to leave these jurisdictional boundaries where they are today as a result of many years of accommodations among the departments and agencies in the Intelligence Community. The current arrangements represent a balance of competing interests, competences and responsibilities that cannot easily be restructured. It is the Administration's position that minor tinkering with this balance would be destructive of the entire system and that a radical restructuring at the present time would cause damage to the entire national intelligence effort. Therefore, the Administration feels that these Charter provisions, which essentially reflect the provisions of Executive Order 12036 and longstanding practice within the Intelligence Community, should not be changed. It should be noted, however, that the Charter bill contains ample authority for the President to make such changes in authorities as may be necessary to fine-tune the present arrangements within the Intelligence Community. If a radical revision of existing Community structure appears appropriate at some time in the future, new legislation can be introduced for this purpose.

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4. Section 426(d)(2) provides a procedure whereby the Agency can draw down on monies in the Contingency Reserve Fund (CRF). This procedure is based on a 72 hour "prior notification" of the HPSCI, the SSCI, and the two Appropriation's Committees with an exception for "extraordinary circumstances." Is this a departure from current practice? Do you agree with Section 426(d)(2) as drafted. If so, doesn't this run counter to the position taken by Admiral Turner with regard to other "prior notification" provisions in the Charter?

Answer:

This would be a departure from current practice to the extent that this procedure would be codified in statute. I would object to the need for any such codification. Moreover, if, as seems intended, that the provision would require detailed reporting on the purpose of the withdrawal, it is objectionable because it would make notification a condition precedent to the expenditure of funds withdrawn from the Reserve Fund.

Current procedures with regard to CRF "draw-downs" for special activities are as follows:

(1) the President makes a covert action "finding" (Hughes-Ryan);

(2) "appropriate" Committees are notified of the c.a. finding;

(3) DCI requests approval from OMB of CRF "draw-down;"

(4) Concomitantly with step No. 3, the two Oversight Committees and the two Appropriations Committees are notified of the DCI's request for OMB approval of "draw-down."

[NOTE: OMB approval usually takes several days. We do not go back to the Committees to notify them that OMB has approved. OMB has never disapproved.]

It is clear from the procedure outlined above that the Committees, as a matter of course, do have prior notification in either the context of a Hughes-Ryan finding or a CRF "draw-down." This procedure has worked well. There is no need to codify the notification process and thereby make "notification of the purpose" a condition precedent to expenditure.

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5. Section 431(b) and 431(c) has as its focus "parity" with the State Department in the area of "benefits." It is our understanding that the Administration does not approve of retention of these provisions in the Bill. Could you explain?

Answer:

Covered in statement.

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6. Why is there a need for Criminal Penalties for the "misuse of the name, initials, or seal of the CIA?" (Section 443)

Answer:

The CIA does not have a specific statute like the FBI does, which broadly protects its name from false advertising or misuse. CIA must rely upon several criminal statutes generally applicable to the entire Federal Government for the protection of the Agency's seal. The statutes are very narrow in terms of what they will protect and the types of uses they will proscribe. Therefore, the present statutory machinery available to the CIA for the protection of its seal and initials is neither sufficient nor complete. The mission and functions of the CIA are clearly as important and sensitive as those of the FBI. Further, in the light of the past abuses ascribed to CIA, the integrity of the CIA's seal and initials must be preserved, with the seal and initials protected from any possible misuse. This section would protect the name and initials of the CIA, and also protect the CIA seal or any facsimile.

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7. Section 431(b)(4)(A) and (B) grants authority to the Director of the Agency to pay a "death graturity."

(a) is this the same as the State benefit?

Answer: No

(b) how different?

Answer: the standard contained in 431(b) is the one approved by OMB and subsequently introduced by Representative Derwinski (H.R. 5666) and Senator Bentsen (S. 1930)

(c) would you want an "in the performance of duty" standard?

Answer: Yes; we may want to draft language in conjunction with the Committee's recommendations.

(d) what about retroactivity? Does this provision cover Dick Welsh's widow?

Answer: No

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8. This bill allows targeting U.S. persons who are not acting on behalf of foreign powers who may possess information the Government believes to be essential. In what circumstances and how often would the CIA want this authority used? What would be the role of the CIA in gathering it.

Answer:

-- This authority is essentially an escape provision for collection of foreign intelligence in situations which involve vital national security interests. We contemplate that the authority would be used rarely, if at all. Furthermore any use of an intrusive technique would require a court order (electronic surveillance or surreptitious entry).

-- For example, the situations described by Morton Halperin in a 24 February article, New York Times, would not meet the high standard for collection in Section 213 of the Bill. Those situations are:

> . . . columnist Joe Kraft in Paris interviewing representatives of Hanoi's government; the U.S. wants to know what Kraft learned. Clearly there are no facts to show that the information sought is essential to the national security;
>
> . . . Daniel Schorr being considered for a job;
>
> . . . Vice President Agnew under FBI surveillance because President Johnson thought he was working with the Saigon government.
>
> . . . the question of foreign control of the anti-war movement.

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9. Under current law CIA is to perform no internal security functions. In this charter the CIA in limited circumstances could direct intelligence activities against Americans in the U.S. and against foreigners in the U.S. as well. What kinds of activities are envisioned here? Should all these be left to the FBI?

Answer:

There are circumstances where CIA has unique access to Americans and foreigners in the U.S. who possess essential foreign intelligence not otherwise obtainable. In such circumstances, the sensitivity of the collection activity would preclude CIA turning the entire activity over to the FBI. This would be particularly true if the collection involved the utilization of an established source. Since the collection of foreign intelligence is a foreign affairs function, domestic internal security concerns are not an issue.

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10. You agreed in your confirmation hearings that Secretary Vance's statement that covert operations should be limited to extraordinary circumstances. Do you still agree with that statement. If no, why not?

Answer:

We live in a world of ever-increasing danger. A flexible foreign policy must be able to take in account the grim realities of that world. The extraordinary nature of the world situation today would, in my opinion, justify the undertaking of appropriate covert operations in response to specific foreign policy requirements. What may constitute "extraordinary circumstances" in the future should be determined in light of significant and contemporaneous world events.

-- covert action is one aspect of foreign policy implementation;

-- still agree with the statement: it is preferable to work out foreign policy problems in open diplomatic channels, however we must recognize that this is not always possible.

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11. The counterintelligence activities of hostile intelligence services transend international boundaries and concern such broadly distinct and separate problems as security, HUMINT activities, and strategic deception. Using the facts involved inthe Kampiles and Boyce-Lee affairs where does the responsibility lie within the Intelligence Community for coordinationg the separate problems in counter-intelligence?

Answer:

Many counterintelligence problems also involve security issues because employees of contractor or the Government are involved. There is ample authority in such cases for each Agency to deal with the problem. The real issue is how to address these CI concerns when persons outside the Government are involved. Historically, the FBI has handled these cases within the U.S. while CIA has had responsibility abroad in this area.

Should the charter create an overall counterintelligence umbrella in place of the present division of responsibility within the Intelligence Community?

Answer:

See standard jurisdictional answer (Question 3).

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12. Is the authority of the DCI to accept "gifts" as crated in Section 421(j) satisfactory?

Answer:

Subsequent to the introduction of S. 2284, negotiations between CIA and the Office of Management and Budget continued with a view to working out an agreed upon version of the "gift" authority. These negotiations resulted in a slightly modified version of this proposal being granted Administration approval. The modified version has been sent to the Hill as a separate title to the FY 81 Intelligence Authorization Bill. We will be glad to supply the Committee copies of the modified version. I would venture to say that the modified version will in all likelihood be acceptable to the Committee.

A copy of the Administration approved version follows:

". . . Accept, hold, administer, and utilize for artistic or general employee or dependent welfare, educational, recreational or like purposes, gifts, bequests or devises of money, securities or other property of whatsoever character whenever the Director determines that it would be in the interest of the United States to do so, but he shall accept no gift which is expressly conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by act of Congress. Unless otherwise restricted by the terms of the gift, bequest or devise, the Director may sell or exchange, and invest or reinvest such property in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Gifts, bequests, and devises of money, securities and other intangible property accepted pursuant to this subsection, and the earnings and proceeds thereof, shall be deposited in a separate fund to be called the Central Intelligence Agency General Gift Fund and shall be disbursed upon the order of the Director. For purposes of Federal income, estate and gift taxes, gifts, bequests and devises accepted by the Director shall be deemed to be to or for the use of the United States.

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13. In your 20 February testimony on FOIA before the House Government Operations Subcommittee on Government Information and Individual Rights you said, "Admiral Turner and I, as congressionally approved Presidential appointees, insure that these committees [SSCI and HPSIC] are now and will continue to be supplied with whatever information they need in order that the Congress may be satisfied that the Central Intelligence Agency is conducting its activities within the law." [emphasis added] Isn't this statement inconsisent with Admiral Turner's insistance last week that Section 142 of the Charter be changed to include a reference to sources and methods in the language pertaining to the intelligence committees' right to access to information from the Intelligence Community?

Answer:

No; I do not believe there is any inconsistency whatever. As far as we are aware there has never been a problem with either the House or Senate Select Committees on the question of access to information. The Committees have refrained from requesting information that identified specific sources, agents, or relationships. On the other hand, we have been forthcoming with sensitive information when the Committees have had a clear need for such information. The Administration's position is that Section 142 should reflect the language currently in Section 3-4 of Executive Order 12036. In several years of evolving oversight relationships this language has not proved to pose any impediment to your Committee's access to information required for oversignt purposes. The Administration's proposed language would essentially codify intelligence reporting and oversight arrangements in the mutually satisfactorily fashion in which they now exist.

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But suppose the Committee did request information on specific sources. Are you saying that you would not give this to us?

Answer:

I am saying that this kind of information has not thus far been thought to be necessary of effective oversight. Should a situation arise in the future where the Committee insisted upon such information and the Executive Branch did not agree that it was necessary for oversight purposes we would obviously try to arrive at some accommodation. If there was a confrontation between the Legislative and Executive Branches, a reference to sources and methods in Section 142 would probably not be determinative of the outcome but the damage that would be done by omitting the language would be real and immediate. We must be able to give the sources and organizations who cooperate with us believable assurances that their identities and cooperations will be safe from disclosure. In this regard, the omission of reference to the proteciton of sources and methods in Seciton 142 must be read in conjunction with the provisions on congressional release of information in Section 143, which provide for public disclosure in accordance with S. Res. 400 and H. Res. 658. These resolutions provide for public disclosure despite presidential objection. Mr. Chairman an intelligence service which cannot assure its sources of information and assistance that their cooperation with the United States is safe from public disclosure will not be able to produce the kind of intelligence our country must have in the dangerous decades ahead.

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